

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA**

THOMAS D. BRALEY, ) CV F 05-0059 AWI WMW HC  
Petitioner, ) ORDER ADOPTING  
v. ) FINDINGS AND  
L. CROWNES, WARDEN, et al., ) RECOMMENDATIONS  
Respondent. ) ORDER GRANTING MOTION  
 ) TO DISMISS  
 ) [Documents #11 & #15]

Petitioner is a prisoner proceeding with a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. Section 2254. Petitioner claims that he is entitled to be released because he has served his two year prison term and is entitled to prison credits.

On July 15, 2005, the Magistrate Judge filed findings and recommendations that recommended Respondent's motion to dismiss be granted and the petition be dismissed for Petitioner's failure to exhaust state judicial remedies. These findings and recommendations were served on the parties and contained notice to the parties that any objections to the findings and recommendations were to be filed within thirty days.

Petitioner filed objections on August 22, 2005.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)C) this court has conducted a de novo review of this case. See Britt v. Simi Valley Unified School Dist., 708 F.2d 452, 454 (9<sup>th</sup> Cir. 1983). Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis. In his

1 objections, Petitioner provides over 100 pages of exhibits in support of Petitioner's claim.  
2 Petitioner complains that the Magistrate Judge erred by ordering some of these documents  
3 returned to Petitioner earlier in this action. In addition, Petitioner discusses various  
4 difficulties he has had obtaining records supporting his claim. Finally, Petitioner provides  
5 copies of numerous appeals filed within the prison system concerning Petitioner's good time  
6 credits and release date. As explained by the Magistrate Judge, a petition for writ of habeas  
7 corpus cannot be granted unless the petitioner has "exhausted the remedies available in the  
8 courts of the State." 28 U.S.C. § 2254(b)(1). A petitioner can satisfy this exhaustion  
9 requirement by providing the highest state court with a full and fair opportunity to consider  
10 all claims before presenting them to the federal court. Picard v. Connor, 404 U.S. 270, 276  
11 (1971); Johnson v. Zenon, 88 F.3d 828, 829 (9<sup>th</sup> Cir. 1996); James v. Borg, 24 F.3d 20, 24  
12 (9<sup>th</sup> Cir. 1994). The court has reviewed Petitioner's voluminous objections. Nowhere does  
13 Petitioner provide evidence that he has presented his claim to the California Supreme Court.  
14 Petitioner does not refute Respondent's evidence that the petition's claim was never  
15 presented to the California Supreme Court. Accordingly, the petition's claim is unexhausted,  
16 and the petition must be dismissed.

17 Accordingly, it is HEREBY ORDERED that:

18 1. The findings and recommendations issued by the Magistrate Judge on  
19 July 15, 2005, are ADOPTED IN FULL;  
20 2. Respondent's motion to dismiss is GRANTED;  
21 3. This petition is dismissed without prejudice for failure to exhaust state remedies;  
22 4. The Clerk of the Court is directed to enter judgment for Respondent and to close this  
23 case.

24 IT IS SO ORDERED.

25 Dated: September 20, 2005  
0m8i78

26 /s/ Anthony W. Ishii  
UNITED STATES DISTRICT JUDGE